

PREHEARING CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification of ) Docket No.  
the Los Esteros Critical Energy ) 03-AFC-02  
Facility Phase 2 (LOS ESTEROS 2) )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 22, 2004

1:13 p.m.

Reported by:  
Peter Petty  
Contract No. 170-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman, Presiding Member

Jackalyne Pfannenstiel, Commissioner

HEARING OFFICER, ADVISORS PRESENT

Ed Bouillon, Hearing Officer

Rick Buckingham, Advisor to Chairman Keese

Timothy Tutt, Advisor to Commissioner Pfannenstiel

STAFF AND CONSULTANTS PRESENT

Robert Worl, Project Manager

Dick Ratliff, Senior Staff Counsel

PUBLIC ADVISER

J. Mike Monasmith

APPLICANT

Christopher Ellison, Attorney  
Ellison, Schneider and Harris, LLP  
representing Calpine Corporation

Rick Tetzloff, Project Manager  
Calpine Corporation

Steven A. DeYoung, Principal  
DeYoung Environmental Consulting

ALSO PRESENT

Robert Sarvey  
Californians for Renewable Energy

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## P R O C E E D I N G S

1:13 p.m.

PRESIDING MEMBER KEESE: We're here on the application for certification for the Los Esteros Critical Energy Facility Phase II. And we're actually looking at Phase I.

I'm Bill Keese, Chair of this Committee. And on my left is Rick Buckingham, my Advisor. Jackie Pfannenstiel is on this Committee, also. And to her right is Tim Tutt, her Advisor. And Mr. Ed Bouillon is going to conduct this hearing. Mr. Bouillon.

HEARING OFFICER BOUILLON: Thank you, Chairman Keese. My name's Ed Bouillon; I'm a Hearing Adviser, and I'll be the Referee today and at the evidentiary hearings.

First of all, this is a duly noticed prehearing conference for proposed recertification of the Los Esteros Critical Energy Facility; CEC docket number 03-AFC-2. The Committee is chaired by the Presiding Member, William J. Keese. And all Committee Members are present.

The Commission's Public Adviser, Margret Kim, is not present, but her assistant, Mike Monasmith, is. And I don't see any members of the

1 public here, but if anybody needs any help with  
2 anything talk to Mr. Monasmith.

3 I think we'll first introduce the  
4 parties. First, the applicant.

5 MR. ELLISON: Chris Ellison, Ellison,  
6 Schneider and Harris, attorneys for the applicant.

7 HEARING OFFICER BOUILLON: Would you  
8 introduce the members of your party that are here  
9 today.

10 MR. TETZLOFF: Rick Tetzloff from  
11 Calpine. And behind me is Steve DeYoung,  
12 environmental manager.

13 HEARING OFFICER BOUILLON: Thank you.  
14 And on behalf of staff.

15 MR. RATLIFF: Dick Ratliff, counsel for  
16 staff. And Bob Worl, the project manager is with  
17 me.

18 HEARING OFFICER BOUILLON: And Mr.  
19 Monasmith is in the back. And we have a person  
20 here on behalf of CARE. Would you please come up  
21 to one of the microphones and introduce yourself.

22 MR. SARVEY: Robert Sarvey on behalf of  
23 CARE.

24 HEARING OFFICER BOUILLON: I don't see  
25 any representative here from the only one who's

1       intervened to date, which is CURE. They have not  
2       filed a prehearing statement and I therefore did  
3       not expect to see them.

4               A few housekeeping matters before we  
5       begin. This morning I received a copy of a  
6       petition to intervene on behalf of CARE, which the  
7       Committee may or may not have seen.

8               And I believe in the notice of  
9       prehearing conference the Committee directed that  
10      any petition to intervene should be filed prior to  
11      November 22nd. As I understand it, the petition  
12      to intervene was filed today. That little  
13      abnormality aside, I'd like to deal with the  
14      petition as filed, and ask both the applicant and  
15      the staff if they have any comments on the  
16      petition on way or the other. First, the  
17      applicant.

18              First, indicate whether or not you  
19      received a copy of it, and if so, when you did.

20              MR. ELLISON: I have received a copy of  
21      it about two hours ago. I have had a chance to  
22      read it. Calpine will waive it's ten-day wait to  
23      respond to it, and we are prepared to respond to  
24      it now.

25              We also have received and are informed

1 by CARE's prehearing conference statement which I  
2 also received about two hours ago.

3 And in looking at the two documents  
4 together, while it is Calpine's policy generally  
5 to not object to interventions in these sorts of  
6 proceedings, here we believe an exception is  
7 warranted for two reasons.

8 One of them is the history of this  
9 intervenor, which I'm not going to recount for  
10 you, I think you're quite familiar with it. But,  
11 I will simply say that this intervenor has a  
12 history at this Commission and in Calpine  
13 proceedings of intervening late, seeking to delay  
14 proceedings and raising issues which are found  
15 later to be frivolous.

16 And we see evidence of that to be  
17 repeated in this proceeding when we look at the  
18 issues that are raised in the prehearing  
19 conference statement.

20 First of all, the timing of the  
21 intervention is, as you pointed out this morning,  
22 late. CARE has not participated in any of the  
23 workshops or any of the proceedings that have gone  
24 on in this proceeding up until now.

25 Has not availed itself of any

1 opportunities for discovery, nor has made itself  
2 available to Calpine for discovery.

3 With that background let me just walk  
4 quickly through the issues that are raised in the  
5 prehearing conference statement.

6 First, with respect to air quality, CARE  
7 makes the statement, quote, "CARE supports staff's  
8 analysis in the FSA requiring full mitigation of  
9 the project's PM10 and PM2.5 emissions." And then  
10 it goes on, "Staff and applicant have agreed that  
11 those emissions are fully mitigated. There is no  
12 dispute between staff and applicant with respect  
13 to that."

14 I believe staff will confirm that. So,  
15 to the extent that CARE's intervention is based  
16 upon that dispute, there is no real issue there.

17 With respect to the ammonia emissions,  
18 which is the second issue raised under air  
19 quality, there is no difference in the ammonia  
20 emissions between the Phase I project being  
21 recertified here and the ammonia emissions that  
22 the Commission has previously certified. And I  
23 would urge the Commission to require CARE to make  
24 some showing that there's some new fact that calls  
25 upon the Commission to re-examine its earlier



1 finding with respect to that.

2 Secondly, by denying Calpine any right  
3 to discovery we have no idea what sort of  
4 environmental program they're talking about here.  
5 And, once again, there's a real potential for  
6 delay.

7 With respect to the environmental  
8 justice issue, this issue is predicated again upon  
9 a misunderstanding that the particulate matter  
10 emissions from the project are not fully  
11 mitigated. Specifically CARE states, "The project  
12 area has a minority population greater than 50  
13 percent, and the applicant has been operating the  
14 project without full PM10 mitigation, as  
15 identified by staff in the FSA. Mitigation should  
16 be provided to the minority community to address  
17 the operation of the facility without full  
18 mitigation in the community."

19 As I mentioned earlier, staff and  
20 applicant agree that there is full mitigation for  
21 PM10. So this is also a non-issue.

22 And then the last issue that CARE raises  
23 is under the topic energy resources. CARE makes  
24 the statement, "The projects should have a  
25 reduction in hours because the three-year

1 conversion requirement has been eliminated. A  
2 peaker project should not be licensed for 8760  
3 hours per year without a sunset provision or a  
4 limitation on operating hours."

5 Here CARE cites no environmental impact,  
6 nor does CARE cite any law, ordinance, regulation  
7 or standard that supports this proposed policy.  
8 And I submit to you there is none.

9 So, once again, this is a non-issue.  
10 This is an issue that finds no support in law or  
11 policy.

12 So the bottomline is that on their face  
13 of this petition all three of these issues are  
14 frivolous and have no merit. To delay the  
15 proceeding in any way to pursue these sorts of  
16 issues, given the history of this intervenor, we  
17 think is inappropriate.

18 And so on that basis we object to the  
19 intervention. Having said that, in the  
20 alternative, if the Commission chooses to allow  
21 this intervenor, to grant the petition for  
22 intervention, at a minimum we would ask the  
23 Commission to require this intervenor to take this  
24 proceeding as they find it. To not prejudice any  
25 other party or this proceeding by their failure to

1 appear any earlier in the proceeding.

2 And what I mean specifically by that is,  
3 first of all, I think they should be required to  
4 identify any witnesses that they have, that they  
5 might intend to present, today, as all the other  
6 parties are. There's some reference that CARE has  
7 not identified witnesses yet, but may do so in the  
8 future. And so our first request would be that  
9 CARE be required to identify any witnesses today.

10 Secondly, that the proceeding not be  
11 delayed in any way as a result of this  
12 intervention, and that CARE be required to proceed  
13 in accordance with the schedule that would have  
14 occurred in any event.

15 And lastly, we would request that CARE  
16 be held strictly to the cross-examination  
17 timeframes proposed in their prehearing conference  
18 statement and to the topics that they identify in  
19 their prehearing conference statement.

20 So, to sum up, Calpine does object to  
21 the intervention on the bases that I described  
22 earlier. In the alternative, if the Commission  
23 chooses to allow CARE to intervene, we would ask  
24 that their delay in appearing in this proceeding  
25 not prejudice any of the other parties or the

1 proceeding, itself. Thank you.

2 HEARING OFFICER BOUILLON: Mr. Ratliff.

3 MR. RATLIFF: Yes, thank you, Mr.

4 Bouillon. I think perhaps one of the things that  
5 we ought to do first is to clarify whether CARE's  
6 petition to intervene is to the Phase II portion  
7 of the project or Phase I.

8 I notice that on the cover they say it's  
9 Phase II rather than -- what we call Phase I is  
10 the relicensing portion of the proceeding, which  
11 is what this prehearing conference is about.

12 I understood their petition to intervene  
13 to be actually for the other license application,  
14 which is the Phase II intervention. If we could  
15 at least have that clarification I think it might  
16 be helpful in terms of understanding what it is  
17 that CARE is intervening in.

18 The staff is not going to object to the  
19 participation in either of these proceedings, but  
20 we would also, I think, join with the applicant in  
21 urging the Committee that at least for the Phase I  
22 portion of the proceeding there should be no delay  
23 in that proceeding by virtue of an intervention,  
24 if it is, in fact, Phase I that CARE intends to  
25 intervene in.

1 HEARING OFFICER BOUILLON: I understood  
2 their petition to intervene to be to Phase I of  
3 Los Esteros II, the way we've been referring to  
4 it. And I see by the nod of your head that CARE  
5 agrees with that statement.

6 Would you please respond to the comments  
7 that have been made, and add anything you --

8 MR. SARVEY: Sure, thank you. First of  
9 all, CARE filed this petition Sunday night. It  
10 was received today by most parties, but we did  
11 file it Sunday night.

12 And as far as being involved in here to  
13 have time delays and such, that's not our purpose  
14 here.

15 We support staff's position in air  
16 quality and we wanted to make sure that Calpine  
17 continued on with their mitigation program rather  
18 than surrender SO2 ERCs, which we have found out  
19 that they have done.

20 As far as energy resources, they're not  
21 being a precedent, we disagree with that. I  
22 personally participated in the MID proceeding,  
23 energy resources was a large topic. We feel it's  
24 inappropriate to run a peaker plant 8760 hours.  
25 We'd like to see some restrictions placed on that.

1 We feel it provides a burden to the entire state  
2 to use natural gas in this manner.

3 And that's the basis of our  
4 intervention. We don't intend to prolong  
5 anything. We don't intend to be a nuisance in  
6 this to Calpine or to the Energy Commission.

7 HEARING OFFICER BOUILLON: Thank you.  
8 Before we go any further, Mr. Ellison, would you  
9 give us about maybe two or three to five minutes  
10 about what your application, in total, is about,  
11 the conversion to a combined cycle; and how the  
12 two, Phase I and Phase II, are being separated out  
13 and why.

14 MR. TETZLOFF: I'll actually try and  
15 take that. Again, my name is Rick Tetzloff with  
16 Calpine.

17 The AFC was originally filed as a joint  
18 application for both the Phase I relicensing and  
19 the licensing for Phase II.

20 Again, Phase I is existing project which  
21 would extend its license beyond the initial three-  
22 year period. The Phase II license would be to  
23 convert the existing plant into a combined cycle  
24 project with a five-year window in which to start  
25 construction for that.

1           The Phase II would increase the capacity  
2       of the project up to about 320 megawatts. The  
3       current facility is 180 megawatts.

4           The decision to break the two processes  
5       up happened probably a month or two ago when we  
6       were, you know, looking at the long-range schedule  
7       and seeing that the existing license runs out in  
8       July of next year. And it would be really tight  
9       if we kept the two processes together in order to  
10      have a decision for Phase I that we could depend  
11      on to occur before then.

12          And one of the other issues was that  
13      there are several requests for proposals being  
14      issued by utilities that we need to have some  
15      certainty as to what's going to happen with Los  
16      Esteros so we know how to respond to those  
17      requests. Whether we want to bid it as a combined  
18      cycle project or as an existing project.

19          So that was the idea behind the  
20      splitting the two up.

21          HEARING OFFICER BOUILLON: Thank you.  
22      The Committee, I believe, prefers to take the  
23      matter of the petition to intervene under  
24      submission, and we will issue a written order as  
25      required by the regulations as soon as possible.

1           But assuming, I think it is the feeling  
2       of the Committee that whether or not the petition  
3       is granted, that the intervenor will be required  
4       to take the hearings as they find them.

5           And in turning to the schedule, the  
6       prehearing conference statements that have been  
7       filed indicate a desire to have evidentiary  
8       hearings the week of December 6th. And I have  
9       looked at the scheduling for these chambers and  
10      found that, in fact, December the 6th is  
11      available. And the Commissioners are available  
12      then, also, to my understanding. And, if  
13      possible, we would like to hold the evidentiary  
14      hearings on that date.

15           I'd like to ask CARE if -- I know you  
16      don't have any witnesses, but whether or not your  
17      petition is granted, would you be prepared to  
18      cross-examine staff witnesses, as indicated in  
19      your prehearing conference statement, on that  
20      date?

21           MR. SARVEY: Yes, we will.

22           HEARING OFFICER BOUILLON: And do you  
23      have any objection to the hearings being held in  
24      Sacramento?

25           MR. SARVEY: None at all.



1 HEARING OFFICER BOUILLON: I'll ask the  
2 parties then would you prefer morning or  
3 afternoon? I would suggest morning, if the  
4 petition is granted, just to be on the safe side  
5 we then at least would have all day. Is that  
6 acceptable to the Committee?

7 PRESIDING MEMBER KEESE: What --

8 HEARING OFFICER BOUILLON: December the  
9 6th.

10 PRESIDING MEMBER KEESE: Yes, that is  
11 acceptable. What? 10:00 a.m.?

12 HEARING OFFICER BOUILLON: Yes.

13 MR. ELLISON: That's fine.

14 MR. RATLIFF: That's acceptable to us  
15 either way.

16 PRESIDING MEMBER KEESE: That's okay;  
17 that works. That happens to be the only day that  
18 we have available.

19 HEARING OFFICER BOUILLON: It has also  
20 been the intention of the parties, staff and the  
21 applicant, with no objection apparently by CURE,  
22 to submit all of the testimony by way of affidavit  
23 and/or declaration. And to provide live witnesses  
24 only as required by the Committee or as needed for  
25 cross-examination.

1 I think just to keep things in a  
2 cohesive format that we should have some sort of  
3 live testimony, a summary of live testimony on  
4 project description by the applicant. Just in  
5 capsule form. And then the Committee can ask any  
6 questions it wishes with regard to what's going on  
7 with the project.

8 And additionally I think you should be  
9 prepared for both staff and the applicant to have  
10 witnesses present on the areas indicated by CARE,  
11 air quality, environmental justice and energy  
12 resources, have your people here unless CARE would  
13 indicate to you privately that they have no cross-  
14 examination for one or more of the witnesses as  
15 indicated in their prehearing conference  
16 statement.

17 Because I understand Mr. Ellison to say  
18 there may be problems with the air quality and  
19 mitigation that have been resolved, that may  
20 satisfy CARE. I don't know. So I would ask the  
21 applicant to get together with CARE about whether  
22 those witnesses are needed. But absent that, to  
23 have them present.

24 I'm sure we're all aware that whether or  
25 not the petition is granted, CARE would have a

1 right to cross-examine any witnesses that are  
2 presented. And having indicated that they have  
3 questions for those three areas, I think they  
4 should be provided.

5 And with regard to the filing of  
6 testimony, it's my understanding that the staff's  
7 testimony is all contained in the staff assessment  
8 filed October the 13th, is that correct? Have you  
9 filed --

10 MR. WORL: November 15th was the FSA.  
11 November 15 was the filing date for the final  
12 staff assessment.

13 HEARING OFFICER BOUILLON: And all of  
14 the staff's testimony is included in there, is  
15 that correct?

16 MR. WORL: To date. We may have need  
17 for errata on one or two subtexts of one or two  
18 conditions of certification. They're not  
19 substantial, but we wanted to make the record  
20 accurate and clear.

21 HEARING OFFICER BOUILLON: Okay. And  
22 how long will it take you to prepare that?

23 MR. WORL: Five minutes.

24 (Laughter.)

25 HEARING OFFICER BOUILLON: All right, so

1       you could file that by about 2:00 then?

2               MR. WORL:   Yes.   Probably could.

3               (Laughter.)

4               HEARING OFFICER BOUILLON:   And on behalf  
5       of the applicant you've indicated in your  
6       prehearing conference statement your witnesses and  
7       the topics on which they would testify.   Is all  
8       your testimony already prepared?

9               MR. ELLISON:   We can file it tomorrow.

10              HEARING OFFICER BOUILLON:   Tomorrow.  
11       And that's -- all right, why don't we plan on  
12       doing that.   We'll make the order so that all  
13       testimony will be on file tomorrow, with the  
14       possible exception, if I might inquire of CARE,  
15       prehearing conference statement said you do not  
16       yet have any witnesses, but that you might have  
17       one.

18              It's kind of hard to deal with in the  
19       abstract, given the time limits that we have here.  
20       If you do decide to hire an expert, I think you're  
21       going to have to petition the Commission for  
22       authority to file testimony after tomorrow.   I  
23       don't see how you could possibly file it today.  
24       But we'll deal with that when we come to it.

25              MR. SARVEY:   So the deadline is

1 tomorrow, then?

2 HEARING OFFICER BOUILLON: Excuse me?

3 MR. SARVEY: The deadline for testimony  
4 would be tomorrow, then?

5 HEARING OFFICER BOUILLON: I'm sorry, I  
6 couldn't hear you.

7 MR. SARVEY: The deadline for testimony  
8 would be tomorrow, then?

9 HEARING OFFICER BOUILLON: Yes.

10 MR. SARVEY: Okay, thank you.

11 HEARING OFFICER BOUILLON: And at the  
12 hearing we will ask the parties to stipulate as to  
13 those issues on which there is no dispute, and  
14 waive cross-examination on those topics.

15 And then we will proceed on those topics  
16 by way of sworn declarations. And then we'll turn  
17 to the matter of live testimony which will be set  
18 out in the order.

19 Is there any other items you think we  
20 have to cover? Let me ask you this: Given the  
21 time limits set forth in CARE's prehearing  
22 conference statement, which adds up to somewhere  
23 in the neighborhood of an hour, I think, -- about  
24 an hour, do you think we can finish this in the  
25 morning?

1 MR. RATLIFF: I would expect that we  
2 could.

3 HEARING OFFICER BOUILLON: Mr. Ellison.

4 MR. ELLISON: Assuming that CARE does  
5 not produce a witness of their own, and that all  
6 we're talking about is our cross-examination of  
7 staff and CARE's cross-examination of staff and  
8 applicant, I think we can finish in that  
9 timeframe.

10 HEARING OFFICER BOUILLON: Thank you.  
11 Any other matters you think we need to cover this  
12 afternoon?

13 Chairman Keese, do you have anything?

14 PRESIDING MEMBER KEESE: No.

15 HEARING OFFICER BOUILLON: Commissioner  
16 Pfannenstiel?

17 COMMISSIONER PFANNENSTIEL: No.

18 HEARING OFFICER BOUILLON: Would you  
19 like to adjourn the meeting?

20 PRESIDING MEMBER KEESE: This meeting's  
21 adjourned.

22 (Whereupon, at 1:37 p.m., the Prehearing  
23 Conference was adjourned.)

24 --o0o--

## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Prehearing Conference; that it  
was thereafter transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
conference, nor in any way interested in outcome  
of said conference.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 29th day of November, 2004.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345